NG SIEW CHOO

v.

TAN KIAN CHOON

HIGH COURT, SINGAPORE
YONG PUNG HOW J
[SUIT NO. 1801 OF 1987]
16 MARCH 1990

TORT: *Negligence - Deceased passenger in car - Liability admitted - Estate claim - Assessment of damages for loss years - Dependency claim - Assessment of damages.*

One Ng Choon Kiat ("the deceased") was a passenger in a car driven by the defendant when he was killed in an accident. The cause of action arose in 1987 under the provisions of the Civil Law Act (Cap 30) ("the Act"). The plaintiff is the sister and administratix of the estate of the deceased and brought this action under s. 8 of the Act for the benefit of the estate ("the estate claim") and under s. 12 of the Act for the benefit of the mother as a dependant of deceased ("the dependency claim").

The deceased was 22 years old at the time of the death - he was unmarried and was a hawker running a stall with the help of his elder sister. His younger sister and mother helped out on a part time basis. The mother claimed that the stall was doing very well and that the gross takings were about $6,000 a month and that at the time of the death the deceased was being paid a sum of $600 a month. The two sisters were paid a sum of $500 each. No contributions to the Central Provident Fund were made. The mother claimed that the profits from the stall was $2,000 - $3,000 a month - the evidence showed that the mother deposited an average of $1,000 each a month into her bank accounts between 1984 - 1986. The licence of the stall was in the deceased's father's name. The father had left the family and had agreed that the licence be transferred to the deceased's name. An attempt was made for such a transfer but it was turned down as the deceased was then a minor. After the death of the deceased the father took back the stall. Even if the father had not done so, the mother would have had difficulty running the stall without the assistance of the deceased.

The plaintiff contended that the mother was very dependent on the services of the deceased and that if the deceased had not been killed the deceased would still be running the stall and the mother would still be receiving the profits therefrom amounting to $2,500 which should be the multiplicand to be applied. The defendant contended that there was no evidence to show the mother's dependancy or of the loss and that the deceased was an employee.

The defendant admitted liability but denied that the plaintiff had suffered loss. Interlocutory judgment (on account of admission) was obtained and the matter set down for assessment of damages before the Registrar:

The Registrar:

(a) awarded general damages on the estate claim in the sum of $37,800 based on a multiplicand of $600 a month, a multiplier of 15 and an available surplus of 35%;

(b) dismissed the dependancy claim;

(c) by consent awarded damages of $6,500 for loss of expectation of life; and by consent special damages of $3,000 for funeral expenses and $750 for probate expenses.

The plaintiff appealed against orders (a) and (b).

Held:

[1] On the estate claim - the determination of the loss of future earnings during the "loss years" must take into account not only a fair and reasonable assessment of what the net future earnings might be, but also the multiplier to be applied to arrive at the final figure of loss. It is also necessary to bear in mind that earnings are subject to the vagaries of life.

[2] The available surplus for the estate is what is deemed to have remained after deducting the deceased's living and other personal expenses from his net earnings.

[3] In *Chan Heng Wah & Anor. v. Peh Tian Choh & Anor*. the Court of Appeal held that the available surplus in that case (where contributions to the Central Provident Fund were made) was 40% of the net prospective earnings - in this case there no contributions to the Central Provident Fund were made. As such, the available surplus should not be more than 35% of the net propective earnings. The appeal on this point should be dismissed.

[4] On the dependency claim - there must be pecuniary loss. There must be distinct evidence of pecuniary advantage in existence prior to or at the time of death. The plaintiff must not prove a mere speculative possibility of pecuniary benefit, but that he has lost a reasonable probability of pecuniary advantage.

[5] In this case, in order to determine whether there has been any loss or prospective loss to the mother resulting from the death, it is necessary to look first at the total picture presented by the facts in order to determine the nature of the working relations between the deceased and his mother.

[6] The proper inference here is that the deceased was not an employee but rather that the arrangement was that of a family arrangement and where the money he received was more of a family allowance rather than any form of remuneration.

[7] The deceased was providing services for his mother which were reducible to money value and were lost by her by his death. The principle in the assessment of this form of damages is the same as in the cases where the support of a parent has been lost - the one distinguishing factor has been that the Courts have recognised that an unmarried child might marry in the future and that the services or support previously rendered to the parents might thereby be reduced or ceased.

[8] In this case, the Court has to assess the money value of the services which the deceased contributed to the mother in the running of the stall which she lost by his death over and above the $600 salary earned by the deceased.

[9] In assessing these damages the Court must act on the evidence available, together with such inferences that it can draw and bearing in mind that what is arrived at is the accelarated receipt of a lump sum which should be discounted.

[10] The stall was turning in a nett profit of $2,000 - $3,000 a month after the deduction of salary and expenses. A reduction should be made for the contribution in services made by the sisters and the mother and an allowance for the fact that the deceased lived with his mother.

[11] The cost of replacement of an employee to take over the role of the deceased at the stall is not a reliable guide to the monetary value of the services rendered by a deceased member of the family as the motivations are not the same.

[12] On the evidence the nett monthly value of his services which the mother has lost is $400 a month. A multiplier of 7 years shall be applied and the total of $33,600 - the determination of the multiplicand and the multiplier takes into account the respective ages of the deceased and the mother and the possibility of his eventual marriage and the consequent expectation of a reduction in his contribution to his mother's support.

[13] As the mother has a share in the estate claim her dependancy claim shall be reduced by this share.

[Appeal against quantum of estate claim dismissed. Dependancy claim of $33,600 with interest thereon at 3% per annum from the date of accident to date of judgment and costs to the plaintiff.]

Cases referred to:
Flint v. Lovell [1935] 1 KB 354
Chan Heng Wah & Anor. v. Peh Tiam Choh & Anor. [1988] 1 MLJ 74
Taff Vale Railway Co. v. Jenkins [1913] AC 1
Barnett v. Cohen [1921] 2 KB 461
Wathen v. Vernon [1970] RTR 471
Kandalla v. British Airways Board [1980] 1 All ER 341
Lee Sai Cheong v. Wan Lim Cheong [1962] 28 MLJ 259
Hassan bin Mohammad & Anor. v. Teoh Kim Seng [1987] 1 MLJ 328
Dolbey v. Goodwin [1955] 2 All ER 166

Legislation referred to:
Civil Law Act [Sing], ss. 8, 9, 12(2)(3)
Intestate Succession Act [Sing], ss. 7, 5

For the plaintiff/appellant - Shue Min Ngiam; M/s. Goh Poh & Partners
For the defendant/respondent - T.S. Tan; M/s. T.S. Tan

JUDGMENT

Yong Pung How J:

On 3 June 1986, Ng Choon Kiat ("the deceased") was the front seat passenger in a motor car driven by the defendant, when the car mounted the pavement and collided with a tree. The defendant was killed. Because the cause of action arose before 1987, any claim arising from it would not be governed by the present Civil Law Act (Cap 43), but by the Civil Law Act (Cap 30) ("the Act"), to which the references in this judgment will be made.

On 24 July 1987, the plaintiff, who is a sister of the deceased, as the administratrix of the estate of the deceased, brought this action for the benefit of the estate under s. 8 of the Act, and for the benefit of the mother of the deceased as his dependant under s. 12 of the Act, alleging that the accident was caused by the negligence of the defendant. On 3 August 1987, the defendant delivered a defence admitting negligence, but denying that the plaintiff had suffered any damage, loss or expense.

On 25 March 1988, the plaintiff obtained an order under O. 27 r. 3 for interlocutory judgment to be entered upon this admission of liability, and for damages to be assessed, with costs to be taxed. On 2 June 1989, the Registrar awarded general damages of $37,800 on the estate's claim, based on a multiplicand of $600 per month, a multiplier of 15 and an available surplus of 35%. The Registrar dismissed the mother's claim for dependency. By consent, damages of $6,500 were awarded for loss of expectation of life, and special damages of $3,000 were awarded for funeral expenses and $750 for probate expenses. The plaintiff has appealed against the award on the estate's claim, and against the dismissal of the mother's claim for

dependency. The appeal on the estate's claim which is based on the multiplicand has not been pressed, and the main thrust of the appeal has been directed towards the mother's claim for dependency.

The deceased was 22 years old at the time of his death. He was then a hawker, and, together with an elder sister Choon Lan and a younger sister Beng Choo, was helping their mother, Lee Shok Koon, to run an ice-water stall. The licence for the stall was in fact in the name of their father, Ng Kim Bee, to whom the Housing & Development Board had granted the licence on 17 May 1979. The father had left the family some time in 1980, and had not thereafter either maintained the family or been involved in the running of the stall. After the father's departure, it was run by the mother and the elder sister. After completing his secondary 4 level at school, the deceased helped at the stall for about a year before doing his national service. On completing his national service, the deceased returned to work full time at the stall with the elder sister. The younger sister also helped at the stall after school. By that time, their mother's attendance at the stall was reduced to only 1 to 2 hours per day.

The stall appears to have been a fairly successful business. Although, in the nature of such businesses, no accounts are kept, the mother claimed that in the periods when the deceased was working at the stall, before and after his national service, the gross takings were more than $6,000 per month. She paid salaries to her children: $400 per month to the deceased before he went for his national service, and $600 per month after he returned; and $500 per month to each of the 2 sisters. No Central Provident Fund contributions were paid for any of them. After deducting other expenses, the stall would turn in a net profit of $2,000 - $3,000 per month, which she kept for herself. Her bank statements showed that she was depositing on average about $1,000 per month in the period between 1984 and 1986.

In 1984, the mother had approached the Housing & Development Board to transfer the stall licence from the father to the deceased. The father had consented to this. The application was turned down by the Board, however, as the deceased was then a minor. After the death of the deceased, the father claimed back the stall. The mother thought that he had done this probably because he had to support his other family, but that he would not have done so if the deceased had been alive and was still running the stall. She felt no rancour about this particular aspect of the matter because, even if the father had not taken back the stall, she would have had difficulty in running it, without the deceased.

Estate's Claim

It might be simpler if I dealt first with the appeal on the estate's claim. The principle on which a Court reviews the assessment of damages is well settled. In *Flint v. Lovell* [1935] 1 KB 354 CA, in a statement of the law which has often been cited, Greer LJ said:

> I think it right to say that this Court will be disinclined to reverse the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial Judge on the question of amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this Court, an entirely erroneous estimate of the damages to which the plaintiff is entitled.

In this action it was contended by the plaintiff that the appropriate multiplicand should have been fixed by the Registrar at a higher level than $210 per month. The figure of $210 per month was deduced by the plaintiff from the multiplicand of $7,200 and the available surplus of 35% which were determined by the Registrar. The determination of the loss of future earnings during the so-called "lost years" must necessarily take into account not only a fair

and reasonable assessment of what the net future earnings might be, but also the multiplier to be applied to arrive at the final figure of loss. In doing so, it is also necessary to bear in mind that earnings are subject to all the vagaries of life. In this case, taking all the usual considerations into account, a determination of a multiplicand of $7,200 and a multiplier of 15 could not, in my judgment, be open to challenge by the plaintiff.

The available surplus for the estate is what is deemed to have remained after deducting the deceased's living and other personal expenses from his net earnings. In *Chan Heng Wah & Anor. v. Peh Tiam Choh & Anor.* [1988] 1 MLJ 74, the Court of Appeal came to the conclusion, after reviewing a number of leading authorities on the subject, that the available surplus in that case should be 40% of the net prospective earnings. An important factor which was taken into consideration by the Court was the existence in Singapore of the scheme of enforced savings provided under the Central Provident Fund Act. In the present case, no Central Provident Fund contributions were paid for the deceased, and it is reasonable to come to the conclusion that this would continue to be so, if he had not been killed. Having regard to this, the available surplus should not be determined at more than the 35% determined by the Registrar. Accordingly the appeal against the Registrar's award on the estate's claim must therefore fail.

Mother's Claim

Section 12 of the Act provided for compensation to the family of a person for loss occasioned by his death. Subsection (2) provided that:

> (2) Every such action shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death has been so caused and shall be brought by and in the name of the executor of the person deceased.

Subsection (3) provided that:

> (3) In every such action the Court may give such damages as it thinks proportioned to the loss resulting from such death to the parties respectively for whom and for whose benefit such action is brought.

By subsection (11) "parent" was defined to include the mother of the deceased. Although in practice most claims under this section were necessarily brought by a widow or widower on behalf of herself or himself and their children, claims under this section could equally be brought by a parent of a deceased son or daughter for loss resultIng from such death.

On the evidence, the plaintiff in this action contended that the mother was very much dependent in fact on the services of the deceased. If the deceased had not been killed, the father would not have taken back the stall, the deceased would still be running it, it would still be profitable, and the mother would still be receiving the net proceeds from it. Plaintiff's Counsel contended that the true measure of dependency was $2,500 per month which should be the multiplicand, to which an appropriate multiplier should be applied.

The defendant contended that there was no evidence that the mother was dependent on the services of the deceased and no evidence that she had suffered any loss resultIng from his death. She was in fact the proprietor of the business, in which she employed her 3 children to work and for which she paid them salaries. The deceased was therefore only an employee, and whatever profits might have resulted to the proprietor from the efforts of the employee could not be considered to constitute a dependency on the part of the employer. In any case, the stall licence was in the name of the father, and clause 3 of the licence specifically stated that there should be no sub-letting of the stall, which gave the mother's business an

uncertain life. There was no evidence that the deceased had given to his mother anything out of his $600 per month salary which might otherwise have been some evidence of dependency.

Section 12 of the Act is in *pari materia* with the corresponding provisions of the English Fatal Accidents Acts, and English authorities have formed the basis of almost all our major decisions on the scope of this section. Thus, it is pecuniary loss that the Act is concerned with. But, although it was thought at one time that for such claims to succeed there should be distinct evidence of pecuniary advantage in existence prior to or at the time of death, this has not been so since the House of Lords decision in *Taff Vale Railway Co. v. Jenkins* [1913] AC 1. That case extended the scope of relief to cover even claims for the death of an infant child where there was rarely any actual dependency, so long as there was some basis of fact from which the inference could be drawn that there was a reasonable expectation of pecuniary benefits to the parent, and therefore of prospective loss from the death.

In the *Taff Vale Railway Co.* case, a daughter died aged 16. She was learning dressmaking at the time, was earning extremely little and was in no position to contribute anything to her parents' support. There Lord Haldane said at p. 4:

> The basis is not what has been called solatium, that is to say, damages given for injured feelings or on the ground of sentiment, but damages based on compensation for a pecuniary loss. But then loss may be prospective, and it is quite clear that prospective loss may be taken into account.

Again, at p. 7, Lord Atkinson said:

> I think it has been well established by authority that all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact - there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first, that the deceased earned money in the past, and, second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence, and the necessary inference can I think be drawn from circumstances other than and different from them.

The principle in this case has been amplified in later cases. In *Barnett v. Cohen* [1921] 2 KB 461 it was held that the plaintiff must not prove a mere speculative possibility of pecuniary benefit, but that he has lost a reasonable probability of pecuniary advantage. In that case, the deceased son was not even four years old when he died. Upon the facts of the case, the plaintiff could not prove damage either actual or prospective, and McCardie J dismissed the claim as having been "pressed to extinction by the weight of multiplied contingencies". In *Wathen v. Vernon* [1970] RTR 471 CA the deceased son was 17, earned 6.10 pounds as a craft apprentice and out of it paid his parents 2 pounds which probably did not entirely cover his board and lodging with the family. The Court of Appeal held that the Court was entitled, and in proper cases bound to give damages for loss of potential support, even in cases where at the time of the death no support had ever been given and the possibility of support being necessary in the future and being provided was remote. In *Kandalla v. British Airways Board* [1980] 1 All ER 341, the father brought an action to recover damages in respect of the death of his two daughters aged 31 and 27 in an aircraft accident at Heathrow in 1972. They were both doctors who worked in England, and had never supported their parents who lived in Baghdad. There was no firm evidence as to what they were earning,

although their circumstances indicated that they were probably already spending up to and even beyond the limit of their existing incomes. Notwithstanding the immense difficulties in valuing any dependency, Griffiths J was of the view that:

> Once faced, however, with the responsibility for their parents, I think it can be anticipated that they would have applied their undoubted earning capacities to providing for their parents.

Two Malaysian cases were cited to me and merit careful consideration, as economic and social conditions in Singapore more closely resemble the conditions in Malaysia than those in England. In *Lee Sai Cheong v. Wan Lim Cheong* [1962] 28 MLJ 259 the deceased son was 19 years old and helped in his father's business, the main work done by him consisting of looking after his father's stocks of building material, for which he was paid about $200 a month. The father said that if he had to employ another man to take the place of his son, he would have had to pay $400 a month, but in fact after the son's death, he had not found it necessary to replace the son with another man. On the facts, the Court of Appeal held that as the plaintiff had not suffered any pecuniary loss, he was not entitled to damages for loss of services. The Court did not appear to have found it necessary to consider the question of the possibility of prospective loss.

In *Hassan bin Mohammad & Anor. v. Teoh Kim Send* [1987] 1 MLJ 328, the son died at the age of 12, he did render some kind of assistance to his father in his business of selling fish at an unlicensed stall outside the Central Market in Alor Setar, but he did so only during the week-end school holidays, namely every Friday and Saturday of each week. The father paid him $4 per day as pocket expenses, but said in his evidence that he would have had to pay an outside worker $8 per day for the same work. The father admitted however that the son's help was not crucial to his business, in which his other children also helped. In the circumstances, the Court was satisfied that the services rendered by the deceased son were not reducible to money value and the claims of the parents could not be entertained. As to prospective loss, the Court also found that both parents had failed to prove, on the balance of probabilities, that they had a reasonable expectation of pecuniary benefit if the deceased had lived.

In the present case, in order to determine whether there has been any loss or any prospective loss, to the mother resulting from the death, it is necessary to look first at the total picture presented by the facts in order to determine the nature of the working relations between the deceased and his mother. In my judgment, the proper inference to be drawn from all the facts is that this was not an employer-employee relationship, but a family arrangement of the kind which would not be uncommon with small businesses, like an ice-water stall. Accordingly, the deceased and his sisters were not true employees in the normal sense of the term as we understand it, but were in reality members of a family helping and providing services for a parent. The deceased had helped with the family stall even before he went for his national service, and the younger sister helped after school. The so-called salaries which the deceased and the sisters were paid did not reflect the true worth of their respective contributions to the business or the earnings of the stall, but were more in the nature of family allowances rather than any form of remuneration.

In my judgment the deceased at the date of his death must therefore be considered to be contributing services to his mother which were reducible to money value and were lost to her by his death. Courts in England have for many years made awards in such cases in which the services of a deceased son or daughter have been lost to parents. Where loss or prospective loss can be proved, damages have been awarded in accordance with the same principles as in the cases where the support of a parent has been lost: the one distinguishing

factor has been that the Courts have recognised the possibility that an unmarried child might marry in the future and the services or support previously rendered to the parents might thereby be reduced or ceased. In *Dolbey v. Goodwin* [1955] 2 All ER 166 CA, the deceased son was 29 years old and his mother was about 53. He was steady, unmarried and without matrimonial intentions. He was living with his mother and was contributing to her support a net weekly amount of 4 pounds or so. He was likely to recognise throughout his life his obligations towards his mother. In that case, the Court of Appeal held that sufficient weight would have to be given to the possibility that he would eventually have married and the consequent expectation of a reduction in his contribution to his mother's support.

What the Court has to do in this case is to assess the money value of the services over and above the $600 salary which was paid to him, which the deceased contributed to his mother in running the stall and which she lost by his death. As Mr. Tan has pointed out, there are immense difficulties in attempting an assessment, but a Court cannot be deterred by this fact alone. It must make the best assessment it can on whatever evidence is available, together with such reasonable inferences it can draw, bearing in mind that what is arrived at is the accelerated receipt of a lump sum which should be discounted. The stall was turning in a net profit of $2,000 to $3,000 per month after deducting the salaries and other expenses. From this net profit, an appropriate reduction would have to be made for the contributions in services by the 2 sisters and by the mother herself; also, an appropriate allowance would have to be made for the fact that he lived with his mother. It might be argued that, if the stall had not been taken back by the father, the mother might have been able to find an employee to replace the deceased at no more than the same salary. That might well have been so, and indeed she might have found some one else for even less. But, in a family business, what any replacement might cost is not necessarily a reliable guide to the monetary value of the services rendered by a deceased member of the family, because the motivations are not the same.

In my opinion, it would not be unreasonable on the evidence in this case to assess a net monthly value for his services which the mother has lost at a multiplicand of $400 per month, and to apply to it a multiplier of 7 years, to arrive at a total of $33,600. The determination of the multiplicand and the multiplier to be applied would have taken into account the respective ages of the deceased son and his mother, and the possibility of his eventual marriage and the consequent expectation of a reduction in his contribution to his mother's support. Accordingly, there will be judgment for $33,600 on the mother's claim for dependency.

Section 9 of the Civil Law Act empowers the Court to award interest on damages. Following the current practice in Singapore Courts, interest should be calculated at 3% per annum on the amount of damages for dependency of $33,600 from the date of the accident, 3 June 1986 to the date of judgment.

Under s. 7 and s. 5 of the Intestate Succession Act, the mother as one of the two surviving parents would take the deceased's estate in equal proportions. Consequently the award to her as a dependant will be reduced by the amount received by her through the estate as a beneficiary.

As the main issue in this appeal was the possible dependancy of the mother of the deceased, the appropriate order would be for the plaintiff to have her costs.

Also found at [1990] 1 CLJ 1276